IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4775 of 1992
With
SPECIAL CIVIL APPLICATION NO. 4776 OF 1992
SPECIAL CIVIL APPLICATION NO. 4777 OF 1992
AND
SPECIAL CIVIL APPLICATION NO. 4778 OF 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DANJIBHAI P PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4775 of 1992
MR. JAYESH M. PATEL FOR MR AJ PATEL for Petitioners
MR. S.P. SEN,GOVERNMENT PLEADER for Respondent No. 1
MR NITIN N PANDYA for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 07/03/2002

COMMON ORAL JUDGEMENT

1. These four writ petitions involving common questions of (1) exercise of suo motu powers of review beyond reasonable time under Rule 108 (6) of the Bombay Land Revenue Rules, 1972, and (2) the effect of the amendment in Section 2 (6) of the Bombay Tenancy & Agricultural Land Act, and cancellation of mutation entry recorded in favour of the petitioners; on the ground that each of the petitioners has been residing beyond 8 K.ms. from the land in question, are disposed of by this common judgment.

2. All the petitioners who are residents of Himatnagar, district Sabarkantha, purchased different parcel of lands in village Motipura, taluka Himatnagar, district Sabarkantha from the respective owner of the agricultural land concerned. All the petitioners are said to have purchased agricultural land in year 1982. The mutation entry in respect of agricultural land purchased by them respectively came to be posted/ certified in their favour in the year 1982 itself. The Deputy Collector, Himatnagar, district Sabarkantha exercised suo motu powers under Rule 108 (6) of the Land Revenue Rules, 1972 and vide his order dated 26-12-1988 reviewed the entry mutated in favour of the petitioners and cancelled the same on the ground that, each of the petitioners was residing beyond a distance of 8 K.ms from the agricultural land which they have purchased in year 1982 and for which mutation entry which had come to be passed and certified later on in favour of the petitioners.

Against the order passed in RTS Cases by Dy. Collector, Himatnagar, each of the petitioners preferred appeal as under:-

In SCA 4775 - RTS Appeal No: 25/89
In SCA 4776 - RTS Appeal No: 27/89
In SCA 4777 - RTS Appeal No: 32/89
In SCA 4778 - RTS Appeal No: 24/89

Said appeals came to be dismissed vide order dated 30-9-1990, 30-3-1990, 30-6-1990 and 30-3-1990 respectively by the Collector, Sabarkantha, against which petitioners preferred revision application before Addl. Chief Secretary, Revenue department, which also came to be dismissed vide order dated 9-12-1991.

3. The petitioners have challenged the order whereby

mutation in their favour has been cancelled by the authority concerned (Dy. Collector/ Mamlatdar) in respect of agricultural land which they have purchased in year 1982.

4. Present petitions deserve to be allowed on two counts:-

Dy. Collector/ Mamlatdar, Himatnagar, after five years of the certification of the mutation entry in favour of the petitioners could not have exercised suo motu powers under Rule 108 (6) of the Land Revenue Rules, 1972 since the entries in favour of the petitioners were certified as far back as 1982. In case of MOHAMAD KAVI MOHAMAD AMIN VS.FATMABAI IBRAHIM, reported in (1997) 6,SCC, pg. 71, Supreme Court held that the suo motu powers under section 84-C having not been exercised within reasonable time, same cannot be exercised beyond reasonable time. In the case before Supreme Court the question of exercise of suo motu powers after two years came to be considered, and the suo motu inquiry after two years was found to be not within the reasonable time in the aforesaid decision.

In case of DAJIBHAI KANJIBHAI JANDAL Vs. THE MAMLATDAR & AGRICULTURAL LANDS TRIBUNAL, PARDI, in Civil Appeal No. 4917 of 1984, copy whereof is placed on record by learned counsel for the petitioners, the Supreme Court held that the suo motu inquiry initiated after one year of the sale deed to be not within the reasonable time.

In case of BHANABHAI MORARBHAI SOLANKI Vs. STATE OF GUJARAT, reported in 1994 (1) GCD 687 (Guj), this Court took the view that cancellation of mutation entry by way of suo motu revisional powers exercised beyond one year from the date of impugned order was held to be after a long delay.

5. It be hardly said that, if there is no time prescribed, then, exercise of suo motu powers has to be within a reasonable time. In the instant case suo motu powers has been exercised by Mamlatdar, Himatnagar, after five years of the sale deed, which can not be regarded as reasonable, in light of the judgments of the Supreme Court and this Court as above.

6. These petitions deserve to be allowed yet on another ground, i.e. the amendment in Section 2 (6) of the Bombay Tenancy And Agricultural Land Act, by virtue of which the requirement of 8 K.ms distance from the

agricultural land in question has been removed. The amendment also provides that all proceedings relating to any order made or purported to be made under Sec. 84-C of the Bombay Tenancy And Agricultural Lands Act, 1948 for contravention of provisions of Sec. 63, so far as it relates to the breach of clause (6) of Sec. 2 of the principal Act, pending before any Court, Tribunal or other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in Sec. 84-C of the aforesaid Act.

7. In view of the above, the order dated 26-12-1988 in RTS Re. Case No. 18/1987 in SCA No. 4775/1992, order dated 23-12-198 in RTS Re. Case No. 20/1987 in SCA No. 4776/1992, order dated 27-12-1998 in RTS Re. Case No. 16/1987 in SCA No. 4777/1992 and order dated 23-12-1988 in RTS Re. Case No. 12/1987 in SCA No. 4778/1992 passed by Dy. Collector, Himatnagar, Sabarkantha, along with order 30-3-1990 passed by the Collector, Sabarkantha in RTS Appeal No. 25/1989 in SCA No. 4775/1992, order dated 30-3-1990 in RTS Appeal No. 27/89 in SCA 4776/1992, order dated 30-6-1990 in RTS Appeal No. 32/89 in SCA 4777/1992, and order dated 30-3-1990 in RTS Appeal No. 24/89 in SCA 4778/1992; and the order dated 9-12-1991 passed by Dy. Secretary, Revenue Department in Revision Application No. 5/1990, 3/1990, 4/1990 and 2/1990 respectively in Spl.C.A. No. 4775, 4776, 4777 and 4778 of 1992; are hereby quashed.

7. In the result all these writ petitions are allowed. Rule made absolute accordingly. No order as to costs.

Dt: 7-3-2002 (N.G. Nandi, J)

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